

REMARKS

The present application includes claims 37-42, 53, 54, 54 and 57. Claims 43-52 have been canceled per the Examiner's restriction requirement, the Applicant reserves the right to pursue them in another related application. Claims 37-42, 53, 54 and 57 have been rejected by the Examiner.

Claims 37-39, 42, 53, 54, and 57 were rejected under 35 U.S.C. 103(a) as being unpatentable over Cluff et al. (U.S. Patent No. 7,089,449) in view of Vahalia et al. (U.S. Patent No. 6,973,455).

Claim 40 was rejected under 35 U.S.C. 103(a) as being unpatentable over Cluff in view of Vahalia and further in view of Levi et al. (U.S. Patent No. 6,804,778).

Claim 41 was rejected under 35 U.S.C. 103(a) as being unpatentable over Cluff in view of Vahalia and further in view of Jamroga et al. (U.S. Patent No. 6,574,742).

Rejections Under 35 U.S.C. § 103(a)

1. Cluff In View Of Vahalia

The Applicant first turns to the rejection of claims 37-39, 42, 53, 54, and 57 under 35 U.S.C. § 103(a) as being unpatentable over Cluff in view of Vahalia.

Cluff discusses use of a backup storage device that will maintain network access in the event of a fault such that data stored in a backup storage can be retrieved to recover the system. See, e.g., Abstract and col. 1, ll. 45-58. In Cluff, the storage device sets a flag to indicate if a

fault has occurred. Col. 1, ll. 47-52. In response to the flag or to user request, the system is rebooted and data potentially restored. Col. 4, ll. 21-44.

However, as noted by the Examiner, Cluff does not relate to, teach, or suggest use in a medical system with medical data, as recited in the claims of the present application. Furthermore, Cluff does not include a status monitor as recited in the claims of the present application. The presently pending claims recite the presence and/or use of a status monitor that is adapted to at least 1) arbitrate access to the medical data among multiple data requests; 2) detect an error in accessed medical data at a data source; and 3) trigger a restoration of medical data from a centralized remote data store to the data source.

Vahalia discusses a locking system allowing a client to obtain a lock on at least a portion of a file stored in a network file system and then view metadata relating to the file, as well as read and write data to the file. See, e.g., Abstract and col. 3, ln. 58 – col. 4, ln. 14. In Vahalia, communication is direct from the client to the network data storage of a network file server after obtaining the lock. Abstract. While Vahalia discusses use of a file server providing direct data sharing between network clients by arbitrating and coordinate data access and lock requests, such an arbitration and such a system are distinct from those presently claimed herein. Col. 35, ll. 25-32. The file system arbitration of Vahalia does not teach or suggest arbitration for restoration of data from a data store to a data source, as recited in the pending claims. Furthermore, the file system arbitration of Vahalia does not teach or suggest use of a status monitor for arbitrating access to medical data among multiple data requests. In fact, Vahalia fails to teach or suggest the status monitor of the present claims at all. Additionally, Vahalia fails to disclose any sort of error detection and restoration. As discussed above, the presently pending claims recite the

presence and/or use of a status monitor that is adapted to at least 1) arbitrate access to the medical data among multiple data requests; 2) detect an error in accessed medical data at a data source; and 3) trigger a restoration of medical data from a centralized remote data store to the data source. These limitations are lacking from the disclosure of Vahalia.

In addition, any combination of Cluff and Vahalia, while unlikely due to the differences between these references, would fail to teach or suggest all the limitations recited in the pending claims. For example, neither Cluff nor Vahalia teach or suggest the status monitor recited in the pending claims. Thus, a hypothetical combination of Cluff and Vahalia similarly fails to teach or suggest the claimed status monitor. For at least these reasons, the Applicant respectfully submits that claims 37-39, 42, 53, 54, and 57, as amended, should be allowable over the cited art of record.

2. Cluff In View Of Vahalia And Further In View of Levi

The Applicant next turns to the rejection of claim 40 under 35 U.S.C. 103(a) as being unpatentable over Cluff in view of Vahalia and further in view of Levi.

Levi relates to data communications and verification of outgoing data. Col. 1, ll. 13-14. More specifically, Levi relates to methods of verifying the data transmitted by WWW servers to WWW users. Col. 1, ll. 17-30. Levi discusses preventing the display of hacked content on web pages, rather than restoring medical data to a data source from a remote data store in order to ensure the medical data's quality. Col. 2, ll. 11-17. Levi addresses problems encountered by server users that are caused by inadvertent or intentional data corruption at the server. Col. 2, ll. 11-23. Levi describes a method for detecting hacker modification of a web site, rather than

detecting errors in accessed medical data. Col. 3, ll. 29-42; col. 6, ll. 25-45; col. 7, ll. 10-30; col. 10, ll. 50-63; and col. 11, ll. 60-67. If a web site or data signature has been hacked, replacement data is sent. Col. 4, ll. 53-61.

However, Levi does not teach or suggest a *status monitor*, as recited in claims 37-42 of the present application. Levi does not teach or suggest that the status monitor detects an error in accessed data, monitors operation occurring at the data source, and produces a trigger to transfer a copy of medical data from a remote data store to the data source when an error is detected. These limitations are recited in claims 37-42. Additionally, Levi does not disclose a trigger, as recited in claims 37-42. Furthermore, as stated by the Examiner, Levi does not disclose medical data. Rather, Levi discusses web sites viewable by users. The Applicant respectfully submits that web sites available for viewing over the Internet are not necessarily analogous to medical data and error detection and replacement of medical data as recited in claims 37-42 of the present application.

Additionally, as stated by the Examiner, Levi does not teach or suggest “arbitrating access to said medical data among multiple data requests” as recited in independent claim 37. Rather, Levi, as discussed above, merely describes a verification system for checking the quality of data prior to transmission. The verification process does not arbitrate access to a remote data store in cases where multiple sources attempt to access the remote data store or a single data source transmits multiple requests to the remote data store. The verification process does not provide access to a remote data store based on priority that may include system priority, timing priority, or request priority, for example. The invention described in Levi merely monitors the

quality of requested data and, if the requested data has been corrupted, provides some form of uncorrupted data to the user. Thus, Levi does not teach or suggest elements of at least claim 37.

Thus, Levi fails to cure the deficiencies of Cluff and Vahalia with respect to claim 40 and its parent claim 37, and, for at least the reasons discussed above, the Applicant respectfully submits that claim 40 should be allowable over Cluff in view of Vahalia and further in view of Levi.

3. Cluff In View Of Vahalia And Further In View of Jamroga

Finally, the Applicant turns to the rejection of claim 41 under 35 U.S.C. 103(a) as being unpatentable over Cluff in view of Vahalia and further in view of Jamroga.

Jamroga discusses communication, storage, retrieval and delivery of information between a system and participating institutions. See, e.g., Abstract. Jamroga provides data and images able to be searched from shared-access or remote locations. Col. 5, ll. 20-25. However, Jamroga does not teach or suggest arbitrating access to medical data among multiple data requests. Rather, Jamroga simply discusses processing and directing requests according to type of request. Col. 13, ll. 45-50. While more effective control of data access and multiple requests is desirable and addressed by the present application, it is not disclosed by Jamroga. Furthermore, Jamroga, among other things, neither teaches nor fairly suggests a status monitor as recited in the pending claims. Thus, Jamroga fails to cure the deficiencies of Cluff and Vahalia with respect to claim 41 and its parent claim 37, and, for at least the reasons discussed above, the Applicant respectfully submits that claim 41 should be allowable over Cluff in view of Vahalia and further in view of Jamroga.

Thus, the Applicant respectfully submits claim are not taught, suggested or otherwise disclosed or enabled by the cited art of record. The Applicant notes that hindsight should not be used when viewing the pending claims of a previously filed application. *In Re John Fritch*, 972 F.2d 1260, 23 U.S.P.Q. 2d 1780, 1783 (Fed. Cir. 1992). See also *Hodosh v. Block Drug Co., Inc.*, 786 F.2d 1135, 1143 n.5, 229 U.S.P.Q. 182, 187 n.5 (Fed.Cir. 1986); MPEP 2141. The Applicant respectfully submits that claims 37-42, 53, 54 and 57 are in condition for allowance.

Application No. 10/621,959
Attorney Docket No. 15-IS-5715 (13035US02)

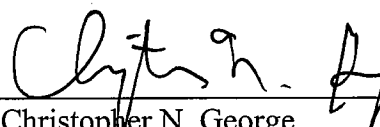
CONCLUSION

If the Examiner has any questions or the Applicant can be of any assistance, the Examiner is invited and encouraged to contact the Applicant at the number below.

The Commissioner is authorized to charge any necessary fees or credit any overpayment to the Deposit Account of GEMS-IT, Account No. 502401.

Respectfully submitted,

Date: June 26, 2007



Christopher N. George
Registration No. 51,728

MCANDREWS, HELD & MALLOY, LTD.
500 West Madison Street, 34th Floor
Chicago, IL 60661

Telephone: (312) 775-8000
Facsimile: (312) 775-8100